IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 278 of 2000
In
SPECIAL CIVIL APPLICATION No. 10571 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER & 1 - Appellant(s)

Versus

BHIMA RAMAJI PUROHIT - Respondent(s)

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Appearance :
MS SEJAL K MANDAVIA for Appellant(s) : 1 - 2.
MR NR SHAHANI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 02/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

1.The appellants – original petitioners have challenged the impugned order dated 28.10.1999 passed by the

Labour Court, Bharuch in Recovery Application No.53 of 1997 by way of Special Civil application No.107571 of 1999, which was dismissed by the learned Single Judge of this Court by his Judgment and order dated 25.4.2000, which is challenged in this Appeal.

2. The respondent workman was working as Oilman Mechanical with effect from 1978 with the appellant. His services were terminated in 1986-87. The termination order was challenged before the Labour Court. In Reference (LCB) 597 of 1990 the Labour Court set aside that order and declared the termination bad. It was challenged before this Court by way of Special Civil Application No.8377 of 1994 which was dismissed by this Court. Thereafter, the respondent had filed Recovery Application No.53 of 1997 before the Labour Court, Bharuch, claiming the benefit of Pay scale on the basis of continuity of service granted by the Labour court. According to the workman he had completed more than 20 years of service, therefore, he was entitled to fixation of pay as per the Rules and Government Circulars and also entitled to draw increment during the interregnum period. However, the present appellant contended before the Labour Court that the workman was not paid regular salary on the basis of continuity in service and also not paid

Dearness Allowances, House Rent Allowances, Medical Allowances, etc. Therefore, his claim for difference of salary cannot be granted. After examining the evidence on record the Labour Court came to the conclusion that the workman was entitled to the salary of Rs.5000/- per month, but paid the salary in the pay scale of Rs.1300 to Rs.1500 and thereafter in the scale of Rs.1500 to Rs.2000 after his reinstatement in service. It has also come to the conclusion that the workman had already completed 20 years of service and juniors to him were paid higher salary, therefore, the workman was entitled to receive the salary as per the Government Resolution with all other consequential benefit on completion of 20 years' service.

3. Before this Court it was not contended by the appellants – petitioners that there was no admission in respect to the fact that similarly situated employee received more than Rs.5000/- per month. But, it was conceded that the witness had in turn stated that according to the Government Resolution no fixation was carried out in favour of the workman and that the workman was entitled to draw monthly salary of Rs.5000/- from 1994. Considering several judgments of the Hon'ble Supreme Court and this Court and also

considering the provisions of Section 33-C of the Industrial Disputes Act the learned Single Judge held that the Labour Court has rightly passed the order in favour of the respondent – workman in view of the admission of the witness of the present appellants.

4. Learned Counsel Ms. Mandavia for the appellants raised the same contention which was raised before the learned Single Judge in writ petition. Learned Counsel Shri Sahani for the respondent workman has supported the order passed by the learned Single Judge dismissing the writ petition in his favour.

5. Before considering the rival submissions it may be stated that the appellants have already complied with the impugned Judgment and order passed by the Labour Court as well as the learned Single Judge. But, there is dispute about the figure. Ms. Mandavia submitted that the respondent workman was not entitled for Rs.92,000/- as awarded by the Labour Court and he was entitled for Rs.45,000/- which has been paid, as per the statement. Shri Sahani for the respondent – workman submitted that he would be satisfied with the amount paid to him provided the continuity is given to him from the date of entry in service, as held by the Labour Court. If the Labour court has passed that Award

then the appellants are bound to extend that benefit to the respondent – workman. Ms. Mandavia for the appellants places on record the statement prepared by the appellants regarding the amount paid to the respondent – workman, which is ordered to be taken on record.

6. Considering the reasons assigned by the Labour Court and the learned Single Judge of this Court we are not inclined to interfere with the same in this LPA as practically the orders passed by the court below are complied with.

7. In view of the above discussion this Appeal fails and is hereby dismissed. However, there shall be no order as to costs.

(B.J.SHETHNA,J.)

(M.C.PATEL, J.)

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